Attorney Docket No. RSW920030249US1 (7161-134U)   **PATENT**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re Application of   :   Customer Number: 46320
                                :
Marcy HOWERTER, et al.   :   Confirmation Number: 2446
                                :
Application No.: 10/734,556   :   Group Art Unit: 2192
                                :
Filed: December 12, 2003   :   Examiner: J. Rutten
                                :
For: REGISTRY DRIVEN REAL-TIME CONFIGURATION OF RESOURCE
        MANAGEMENT OBJECTS FOR DEPLOYMENT IN AN INSTANCE OF AN
        INTEGRATED SOLUTIONS CONSOLE

REPLY BRIEF

Mail Stop Appeal Brief - Patents
Commissioner For Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

        This Reply Brief is submitted under 37 C.F.R. § 41.41 in response to the EXAMINER'S

ANSWER dated February 7, 2008.

        The Examiner's response to Appellants' arguments submitted in the Appeal Brief of

November 13, 2007, raises additional issues and underscores the factual and legal shortcomings

in the Examiner's rejection. In response, Appellants rely upon the arguments presented in the

Appeal Brief of November 13, 2007, and the arguments set forth below.

1   **REMARKS**

2

3   Rejection under 35 U.S.C. § 102

4   On pages 5-7 of the Appeal Brief, Appellants presented arguments that the Examiner has

5   failed to establish that Komine identically discloses the claimed "instances of an integrated

6   solutions console." Initially, the Examiner responded as follows on page 13 of the Examiner's

7   Answer:

8   Appellants essentially argue that the limitation of an integrated solutions console is not
9   disclosed by Komine. As pointed out in the 12/29/06 Non- final Rejection (see item 5 on page 5)
10   and also in the 6/12/07 Final Rejection (see item 3 on page 3 and item 15 on page 9), this
11   limitation is disclosed by Komine at column 4 lines 49-53 (e.g. "client applications") in view of
12   Fig. 1 elements 11 and 100.
13
14   The Examiner's assertion, however, is conclusory and does not set forth any substantial evidence

15   that would lead one having ordinary skill in the art to recognize that the object management

16   system 100 or client application 11 of Komine identically discloses the claimed "instances of an

17   integrated solutions console."

18

19   In the last full paragraph on page 13 of the Examiner's Answer, the Examiner further

20   asserted the following:

21   Appellant further argues (see top of page 7) that previous rejections have not provided an
22   explanation regarding how the reference is both reasonable and consistent with Appellant's
23   specification. It should be noted that although the claims are interpreted in light of the
24   specification, limitations from the specification are not read into the claims. See *In re Van Geuns*,
25   988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). In this case, Komine's client applications
26   provide a view of the enterprise at least in reference to performance of resource managers and
27   object managers (further see Komine column 4 lines 63-66: "The message processor 110 accepts
28   operation request messages that the client applications 11 and 12 issue to transact with the RMs 51
29   to 56, and it passes them to the object manager 130."). As such, it reasonably and consistently
30   corresponds with the discussion of an integrated solutions console provided in the specification.
31   Therefore, Appellants' argument is not persuasive. (emphasis added)
32
33   Appellants are entirely unclear how the Examiner is able to assert that "Komine's client

34   applications provide a view of the enterprise at least in reference to performance of resource

1   managers and object managers" based upon column 4, lines 63-66 of Komine. Regardless of

2   whether the Examiner's assertion is supported, Appellants are unclear as to the relevance of this

3   assertion. Moreover, the underlined portion of the above-reproduced passage is yet another

4   conclusory statement by the Examiner that lacks supportive substantial evidence.

5

6   The Examiner yet again fails to provide a claim construction for the phrase "instances of

7   an integrated solutions console" and clearly explain why the Examiner believes Komine

8   identically discloses these teachings. For example, as claimed, the resources objects (which are

9   configured, e.g., in the configuring step) are deployed in the instances of the integrated solutions

10   console. In the statement of the rejection, the Examiner identifies RMs 51-56 as identically

11   disclosing the claimed resource objects. However, referring to Fig. 1, the RMs 51-56 are not

12   deployed in instances of an integrated solutions console, as claimed. Thus, the Examiner has still

13   failed to establish that Komine identically discloses the claimed invention.

14

15

16   On pages 7 and 8 of the Appeal Brief, Appellants argued that the Examiner has failed to

17   indicate the features corresponding to the claimed "corresponding resources in an enterprise

18   domain." Appellants also noted that the Examiner had failed to set forth a proper claim

19   construction for the term "enterprise domain." In responding to these arguments, the Examiner

20   asserted the following in the first full paragraph on page 14 of the Examiner's Answer:

21   On pages 7-9 of the 11/13/07 Brief, Appellants essentially argue that the reasonable
22   broad interpretation of Komine's "enterprise" as explained in the 6/12/07 Final Rejection (see item
23   4 on page 3) is not consistent with Appellants' originally filed specification. However, Appellant
24   does not provide any portion of the specification which describes such an enterprise as being
25   contrary to Komine. Without direct support for the term in the specification, Appellants turn to the
26   internet based encyclopedia Wikipedia for support for the term enterprise software: "software
27   which provides business logic support functionality for an organization, typically in commercial
28   organizations, which aims to improve the organization's productivity and efficiency." Komine

1   provides such <u>enterprise software at least in terms of object management systems, tree managers,</u>
2   <u>object managers, message processors, etc.</u> See at least Fig. 1 and column 2 lines 30-40. Further,
3   Appellants have not provided any arguments that clearly point out any alleged shortcomings of the
4   reference. Therefore, the argument is not persuasive. (emphasis added)
5
6   Despite being tasked with setting forth a claim construction for the term "enterprise domain," the

7   Examiner yet again dodges the task. Instead, the Examiner responds by improperly trying to

8   shift the burden to Appellants to explain why the Examiner's assertions are incorrect. The

9   Examiner is burdened with supporting a finding of anticipation as to all of the claimed elements.

10   This burden, however, has not been met.

11

12   With regard to the underlined portion of the above-identified passage, the Examiner

13   completely ignores the language of the claim, which recites that the "new resource management

14   object [manages] a corresponding resource in an enterprise domain." At issue is the claimed

15   "corresponding resource in an enterprise domain," to which the Examiner refers to "object

16   management systems, tree managers, object managers, message processors, etc." These alleged

17   "enterprise software" are not being managed by the resource management object (i.e., allegedly

18   disclosed by RMs 51-56). Instead, the RMs 51-56 administer respective management objects

19   (MOs) (see column 4, lines 53-54). Thus, the Examiner is \taking alleged teachings as to the

20   object management system 100, tree manager 120, object managers 130, and message processors

21   110 and improperly associating these alleged teachings to the MOs (i.e., the features being

22   managed by the RMs 51-56) <u>without any factual basis</u>.

23

24   _____

25   In the first full paragraph on page 9 of the Appeal Brief, Appellants argued that the

26   Examiner failed to identify a teaching within Komine that specifically associates a "new resource

4

1   management object" with a "corresponding resource." In responding to these arguments, the

2   Examiner asserted the following in the last full paragraph on page 14 of the Examiner's Answer:

3   The previous rejections have cited Komine column 7 lines 5-7, e.g. "RM7' is to be newly created."
4   Here, RM7 corresponds with a "resource manager" which are at least described in column 4 lines
5   53-56 ("the RMs 51 to 56 administrate their respective managed objects (MOs)") as managing
6   respective or corresponding resources. Thus, Appellants' argument is not persuasive.
7
8   In response to the Examiner's newly cited passage of column 4, lines 53-56, Appellants concede

9   that the RMs manage associated "respective managed objects (MOs)." However, the Examiner

10 has failed to establish that the managed objects disclosed by Komine identically disclose the

11 claimed resource. The objects and resources have different meanings, and the Examiner has not

12 put forth substantial evidence that would support a finding that the teaching of an object

13 identically discloses the claimed resource.

14

15

16   On pages 9 and 10 of the Appeal Brief, Appellants presented arguments as to the

17 Examiner failing to establish that Komine identically disclosing the claimed "consulting a

18 registry of existing resource objects to determine a proper placement for said new resource

19 manage object." In responding to these arguments, the Examiner asserted the following in the

20 paragraph spanning pages 14 and 15 of the Examiner's Answer:

21   On pages 9-10 of the 11/13/07 Brief, Appellants essentially argue that the Komine
22   reference does not disclose "placement" for a new resource management object. However, Komine
23   discloses placement at least in cited column 7 lines 34-35: "a new record with a relative
24   distinguished name "RM7" is added to the RMIB." "Adding" is interpreted as providing
25   placement.
26
27 At the outset, Appellants note that the Examiner yet again provides no substantial evidence that

28 supports a claim construction that permits a finding that "adding" corresponds to the claimed "to

29 determine a proper placement." Instead, the Examiner's analysis is conclusory without factual

30 support.

1

2   Notwithstanding the Examiner's factually-unsupported claim construction, the Examiner

3   has still failed to establish that the placement is based upon "consulting a registry of existing

4   resource management." Komine is silent as to how placement of the RM is determined. Thus,

5   the Examiner has failed to establish that Komine teaches this limitation.

6

7   _____

8   On page 10 of the Appeal Brief, Appellants further argued that the Examiner has failed to

9   set forth a claim construction of "maximal hierarchy" and establish that Komine teaches the

10   limitations associated with this term. In responding to these arguments, the Examiner asserted

11   the following in the paragraph spanning pages 14 and 15 of the Examiner's Answer:

12   Thus, Appellants' argument in not persuasive. Appellant further argues that the "maximal
13   hierarchy" has not been addressed. It is noted that no definition for a "maximal hierarchy" appears
14   in the originally filed specification. In particular, the definition provided on page 10 lines 19-20 of
15   the Brief appears nowhere in the specification. Therefore, reasonable broad interpretation is
16   necessary and has been interpreted as Komine's tree structure (see Fig. 1, element 131, also
17   column 5 lines 62-67, e.g. "tree structure") As such, the argument is not persuasive.
18
19   Yet again, the Examiner makes a claim construction that is not supported by substantial

20   evidence. Instead, the Examiner assertion that a maximal hierarchy "has been interpreted as

21   Komine's tree structure" is a factually-unsupported conclusion.

22

23   The Examiner's factually-unsupported conclusion notwithstanding, the Examiner has

24   apparently failed to investigate the meaning of the phrase "maximal hierarchy," since if the

25   Examiner did perform such an investigation, the Examiner would have recognized that this

26   phrase is an art-recognized term of art.[1] Since the Examiner has failed to establish a proper

_____

[1] See page 10 of http://sureshotstrategies.com/files/DW_Fundamentals_White_Paper.pdf. See page 6 of
http://ssdi.di.fct.unl.pt/bddw/sumarios/assets/2000-Moody.pdf.

1   claim construction for this phrase, and since the Examiner has not established that Komine

2   identically teaches this limitation, the Examiner has failed to establish that Komine teaches this

3   limitation within the meaning of 35 U.S.C. § 102.

4

5

6   On pages 10 and 11 of the Appeal Brief, Appellants argued that the Examiner had failed

7   to specifically identify where Komine identically discloses that the new resource management

8   object is <u>configured</u> for insertion into a maximal hierarchy <u>based upon a determined proper</u>

9   <u>placement</u>. In responding to these arguments, the Examiner asserted the following in the last full

10   paragraph on page 15 of the Examiner's Answer:

11   On pages 10-11 of the 11/13/07 Brief, Appellants essentially argue that the Komine
12   reference does not disclose configuration of objects based upon a proper placement. This argument
13   was addressed in the 6/12/07 Final Rejection (see item 6 on pages 3-4) which cited Komine
14   column 6 lines 4-18 which describes data items in the RMIB entries, i.e. objects. Such data
15   includes at least "Name of Parent RM." A proper placement of an object includes a determination
16   of a parent RM. <u>The configuration of an object includes providing RMIB data which includes data</u>
17   <u>resulting from a proper placement</u>. Therefore, Appellants' arguments are not persuasive.
18   (emphasis added)
19
20   Yet again, the Examiner's analysis ignores the language of the claims. As recited, the new

21   resource object (i.e., allegedly disclosed by RMs) is configured. However, the "RMIB data

22   which includes data resulting from a proper placement" is data residing in database 40, which is

23   separate from the RMs 51-56 (see Fig. 3 of Komine). Thus, the Examiner is relying upon

24   teachings as to the RMIB data (in database 40) being configured to improperly assert that the

25   RMs 51-56 are being configured. Therefore, the Examiner has failed to establish that Komine

26   identically teaches this limitation within the meaning of 35 U.S.C. § 102.

27

28

1   On pages 11 and 12, Appellants presented arguments with regard to several different

2   limitations recited in claim 2 and how the Examiner has failed to establish that these limitations

3   are identically disclosed by Komine. In responding to these arguments, the Examiner asserted

4   the following in the paragraphs spanning pages 15 and 16 of the Examiner's Answer:

5   On pages 11-12 of the 11/13/07 Brief, Appellants essentially argue that the Komine
6   reference does not disclose "editing a deployment descriptor," and "modifying said registry." As
7   cited registry (e.g. RMIB) containing deployment descriptors (e.g. Fig. 4, "Full Name of RM").
8   Here, Komine describes modifying tree structure data as contained in the RMIB to reflect changes
9   in the containment relationships of resource managers. A change in these relationships requires
10   editing a deployment descriptor which requires modifying the registry. Thus, Appellants' argument
11   is not persuasive.
12
13   At the outset, Appellants note that the Examiner has mischaracterized Appellants' arguments.

14   For example, Appellants noted that the editing and modifying steps, as claimed, are associated

15   with the claimed configuring step, but the Examiner's analysis and cited passages within Komine

16   fail to reflect these relationships. Notwithstanding the Examiner's mischaracterization, the

17   Examiner has only partially addressed Appellants' arguments. Moreover, notably absent from

18   the Examiner's assertions is any citations to Komine in support of the Examiner's analysis. As

19   noted in the Appeal Brief, the Examiner's analysis is silent as to the specific limitations recited in

20   claim 2.

21

22   _____

23   On pages 13 and 14 of the Appeal Brief, Appellants presented arguments as to

24   independent claims 11 and 15. In responding to these arguments, the Examiner asserted the

25   following in the first full paragraph on page 16 of the Examiner's Answer:

26   On pages 13-14 of the 11/13/07 Brief, Appellants essentially argue that the Komine
27   reference does not disclose that "a position within the maximal hierarchy is selected or that the
28   new resource management object is added to the hierarchy based upon the selected position." This
29   argument is not persuasive. Komine teaches selection of a position and addition based upon the
30   selected position at least in column 7 lines 19-26 and 34-35. These passages describe testing for a
31   parent RM and based upon such tests, adding a new record, i.e. "selecting" and "adding." Thus,
32   Appellants' argument is not persuasive.

1

2 As previously noted above, the Examiner provides no substantial evidence that supports a claim

3 construction that supports a finding that "adding" corresponds to the claimed "selecting a

4 position within said maximal expansion of said hierarchical subset." The Examiner's citations

5 are <u>completely silent</u> as to the <u>position</u>.

6

7 _____

8   On pages 14 and 15 of the Appeal Brief, Appellants presented arguments as to

9 independent claim 4. In responding to these arguments, the Examiner asserted the following in

10 the paragraph spanning pages 16 and 17 of the Examiner's Answer:

11   On pages 14-16 of the 11/13/07 Brief, Appellants essentially argue that Komine provides
12   multiple instances, not a single instance as required by claim 4. In particular, Appellants argue that
13   claim 4 requires that the hierarchical representation is tied to a specific instance of the integrated
14   solutions console. This argument is not persuasive. The plain language of the claim calls for
15   "accessibility through said instance of said integrated solutions console." Komine discloses this at
16   least in column 4 lines 53-56:
17   While not shown in FIG. 1, the RMs 51 to 56 **administrate** their respective
18   managed objects (MOs), which **provide** the **client applications** 11 and 12 with
19   various processing services on request. [emphasis added]
20   In this case, a hierarchical representation is "tied" to a specific instance of client application 11.
21   Therefore, the argument is not persuasive.
22

23 The Examiner's arguments notwithstanding, the Examiner has failed to establish that the resource

24 management objects are <u>registered for accessibility</u> or that a real-time <u>maximal hierarchy</u>

25 representation of the hierarchy is stored.

26

For the reasons set forth in the Appeal Brief of November 13, 2007, and for those set forth herein, Appellants respectfully solicit the Honorable Board to reverse the Examiner's rejections under 35 U.S.C. §§ 102, 103.

To the extent necessary, a petition for an extension of time under 37 C.F.R. § 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 09-0461, and please credit any excess fees to such deposit account.

Date: April 7, 2008   Respectfully submitted,

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